S. Dh'war 11/51

1951.

Examined

File No. 51

Legal DEPARTMENT

F BRANCH

Subject:— Suits Dharwar.

In the Court of the Civil Judge (S.D.), Dharwar.

Civil Suit No. 345 of 1950.

Mallappa Veerbhadrappa Deshpande — Pltf.

Vs.

The State of Bombay — Deft.

P-75.

(E)

S. Dh'war 11/51.

File No.

Std. Cert. Slip 24-B

C O N T E N T S.

Legal Department File No. S.Dwr. 11/51.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Dharwar.	
		In the Court of the Civil Judge (S.D.) Dharwar.	
		C.S.No. 345 of 1950.	
		M. K. Deshpande.	
		V/s.	
		The State of B'bay.	
		For recovery of Rs. 3,837-4-7 as the refund of the amount of Dattak Nazarana.	1-92.

L.C.Suit No. 345 of 1950. 129

1 – 5

In the Court of the Civil Judge,
Senior Division,
Hubli.

22/12/50

Plaintiff:- Mallappa Veerbhadrappa Deshpande, caste Hindu, age about 24, occupation Watani vahivat, residence Kundgol (Dharwar District).

Vs.

Defendant:- The State of Bombay,
through the Collector of Dharwar.

Value of the suit claim for Court fees & Jurisdiction ( )Rs.3837-4-7

2 FEB 1951

The plaintiff above-named begs to submit the following:-

1). That the plaintiff is a paragana watandar owning considerable property in Kundgol Mahal and Bankapur Taluka.

2). That he was adopted by his paternal uncle late Veerbhadrappa Mallappa Deshpande, the predecessor-in-title to the said paragana watan estate on or about 14-8-1936 and a registered deed of adoption was executed in his favour.

3). That when the fact of this adoption was --

intimated to the Ruler of Jamkhandi according to the custom that was obtaining in the State, the said Ruler passed an order to levy Nazarana of Rs.3837-4-7 from the late Veerbhadrappa Deshpande in about 1938 for recognising this adoption.

4). As this order levying Nazarana was illegal and untenable as the adoption of a member of the same watan family (the plff being the natural brother's son of the adopting watandar) the said Veerbhadrappa Deshpande approached the Rajasahes of Jamkhandi with a request to vacate the said order. As the Ruler illegally and wrongfully insisted on collecting the same, the said Veerbhadrappa approached the Hon'ble the Resident of Kolhapur as the representative of the then paramount power and prayed for an inquiry into the matter and the Hon'ble the Resident asked the Jamkhandi Darbar to substantiate its right to levy Nazarana as it looked obviously illegal and wrongful. As this right could not be substantiated with a view to get out of this uncomfortable position, the Darbar proposed not to press its claim against Veerbhadrappa just then and suggested that the question of the legality and competency of the State to levy Nazarana need not be considered just then. As the State withdrew its claim to recover Nazarana from Veerbhadrappa, the Hon'ble the Resident sent an intimation to him that as the State did not press its claim to levy Nazarana just then from Veerbhadrappa, there was no need to inquire into the legality or competency of the claim. As the said Veerbhadrappa suspected the bona fides of this move on the part of the State, he requested the Hon'ble the Resident to inquire into the question of the legality of the claim and give a final decision then only. The Residency, however, considered

3. 7.

the enquiry as premature in view of the Ruler's undertaking not to levy Nazarana from Veerbhadrappa, and to ally the suspicions of Veerbhadrappa assured him that when and if the Darbar levies Nazarana or the petition will have the right to memorialise the British Government after exhausting his remedy with State'. With this intimation the proceedings were filed and the Darbar did not make any further attempt to levy Nazarana.

5). The said Veerbhadrappa died on or about 21-2-1948 and the plaintiff as his adopted son applied on 16-3-1948 to have his name entered in the Revenue Records as the son and heir of Veerbhadrappa. When this application was submitted, the then Mahalkari of Mundgol seems to have reported to the Prant Officer, Savanur, recommending levy of nazarana of Rs.3837-4-7 x from the plaintiff. As by then the State of Jamkhandi was merged in Bombay State, and original records of the Jamkhandi Darbar relating to this matter were not forthcoming, the plaintiff submitted his objections against the levy on 5-7-1949 explaining the correct legal position and produced the relevant papers. The Village Officers of Mundgol, however, informed him on 29-12-1949 that an order was issued to them by the Mahalkari of Mundgol to collect Nazarana and began to press him for payment of the same. Though the plaintiff approached the Prant Officer and the Collector of Dharwar to have this illegal and untenable order of levy vacated he did not succeed. The plaintiff then approached the Government of Bombay by a petition dated 17-4-1950, detailing the facts of the case, and even this petition was rejected by the Government without even affording him an opportunity to

substantiate his contentions. This decision of the Government was communicated to him by a letter dated 26-7-1950.

6). Thereafter, though the plaintiff sent a notice under section 80 of the Civil Procedure Code on or about 5-8-1950 setting out his contentions, no action was taken by the Government to give him relief. Not only this, even after the said notice was sent intimating the Government of the plaintiff's intention to file a suit against the Government, the local officers pressed the plaintiff for payment of the Nazarana, and the plaintiff paid the amount of Rs.3837-4-7 to the Sub-Treasury at Mundgol under protest on or about 7-9-1950. The plaintiff then sent another notice protesting against the wrongful levy on 17-10-1950 and requested Government to order return of the same failing which he intimated his intention of filing a suit for recovering the amount thus levied. For this notice no reply is sent by the Government. Hence the suit.

7). The plaintiff respectfully submits that the order of levy of Nazarana from him is illegal and void for the following among other grounds:-

a). The order of levy seems to have proceeded on the wrong assumption that Act 3 of 1874(Watan Act) is not applicable to Jamkhandi State area.

b). The Jamkhandi State Administrative Reports will show that the provisions of the said Act were adopted by the State as far back as 1876.

c). It was wrong to assume that the rules obtaining in the Jamkhandi State regarding levy of Nazarana

5 - 9

were different fro the rules obtaining in Bombay State.

d). The fact that the plaintiff is a member of the same Watan family being the natural brother's son of the adopting watandar seems to have been ignored.

e). The several Government Resolutions prohibitting levy of Nazarana in the case of adoption by a watandar of a member of the same watan seem to have escaped the attention of the Government.

f). That when the Jamkhandi Darbar attempted to levy Nazarana the right of the State was questioned by the adoptive father of the plaintiff and the claim was withdrawn. This fact ought to have satisfied the Government that there is no substance in the claim.

g). When the claim set up by the Jamkhandi Darbar was withdrawn and there is a subsequent merger of Jamkhandi in Bombay State it would not be competent to this Court to re-assert the right after merger, as any such right lapsed with the merger of the State in Bombay.

h). As after merger, Jamkhandi has become a part of Bombay State, the territorial law of Bombay State would be the only law that could be applied and enforced in the territories of Bombay State. No other law inconsistent with the territorial law can be invoked or applied.

i). Moreover, as no right existed in favour of the the Jamkhandi Darbar, at the time of merger to levy Nazarana in such cases, as the Darbar had withdrawn its claim once, it would not be competent to the

State of Bombay to reopen such dend claims.

8). The cause of action arose when the Government sent communication dated 26-7-1950 to the plaintiff finally rejecting his prayer for vacating the order of levy of Nazarana, and on 7-9-1950 when the amount of Nazaram was paid into the Sub Treasury at Kundgol under protest by the plaintiff.

9). As the plaintiff ~~xxx~~ is a resident of Kundgol, and this is a suit against the State of Bombay, this Court being the principal Court of original ~~x~~ jurisdiction, this Hon'ble Court is competent to adjudicate upon the merits of the claim.

10). The value of the claim for purposes of Court fees is Rs.3837-4-7 being the amount actually recovered from the plaintiff. The value for purposes of jurisdiction is the same.

11). The claim of the plaintiff is in time.

12). Wherefore it is most respectfully prayed that this Hon'ble Court may be pleased to grant a decree to the plaintiff for the amount of Rs.3837-4-7 illegally and wrongfully recovered from him by the Government, grant him future interest on the said amount till actual payment is made to him at 6%, grant him costs of the suit with such further or other relief that this Hon'ble Court may deem fit to grant in view of the peculiar circumstances of the case.

Hubli,
Date 22-12-50

...Plff.

I, Mallappa Veerabhadrappa Deshpande, the plaintiff above-named, do on solemn affirmation declare that what is stated above in paras 1 to 12, are true to the best of my knowledge information and belief.

Hubli
Date 22-12-50

Copy
M. V. Deshpande
22-12-50

Plff.

7-1951 no. 82 of 8-8-1951

Office of the Subordinate Pleader Hubli

To,

The Remembrancer of legal affairs Bombay.

Subject:- W. S. in Lc. 345/50 of the Hubli Court.

Sir,

I have to submit as under the case is finally fixed for filing W. S. on 28-8-1951. No more time will be given in the case I request you to send the W. S. & case papers before the due date.

16818
E/13-8-51

Yours faithfully
B. Nallathambi
SGP.

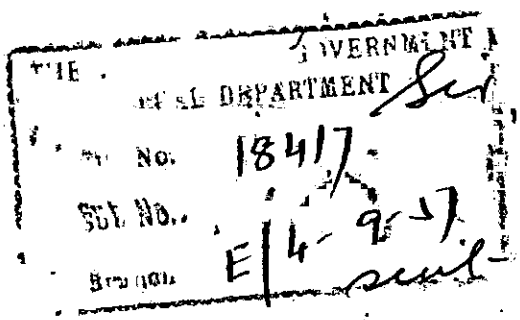
Re. - Hubli C.S. 345/50
Next date fixed is
28-8-51.
For orders

9 9/L no 94 dated 29-8-51
Office of the Sole
Govt Pleader Hubli

To,

The Remembrancer of Legal
Affairs Bombay

Subject:- W.S. in L.C. 345/50 of the
Hubli Court.



I have to submit that the
was fixed for filing W.S.
on 28-8-1951. ~~As~~ As I did not
receive the papers & the W.S. from
you, ~~I had~~ applied for time, but
the court was pleased to reject
the application. The case will

be proceeded ex parte. I had requested by my letter no 82 of 8-8-51 to send the papers & the W.S. before 28th inst. but I have not received the same till today. I have to request you again to send the case papers & the W.S. within a week so as to enable me to get the ex parte order set aside & proceed with the suit.

Hoping that my request will be complied with, yours faithfully

Sd/-

S.P.

11 L.D. 23

Please see letter from the Ag. D.G.P. Dharwar (last page).

He states that the complainant's application for adjournment that the suit will be proceeded ex-parte. He requests for adjournment of the defence within a week.

9/5

Ag. Sols

The D.G.P. Dharwar requests that his application for time to file the W.S in this suit has been rejected & that the suit is now fixed for ex-parte hearing. The date on which it is so fixed has not been communicated to him

the D.J. Patent Office However, I have prepared the papers for being filed in this Suit & the same will be sent to the D.J.P. immediately after approval. The preparation of Brief in this Case is already

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No. 14350
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 7th Sept. 1951.

MEMORANDUM.-

With reference to his letter No.94 dated the 29th August 1951, on the above subject the Sub-Government Pleader, Hubli, is informed that the defence of the above suit is being sanctioned. In the meantime he is requested to file the written statement two copies of which are sent herewith.

Encl.2 copies of Written Statement.

for Remembrancer of Legal Affairs.

To

The Sub-Government Pleader,
HUBLI.

15 25/7

In the Court of the Civil Judge, Senior Division,
Dharwar.

Dharwar Civil Suit No.345 of 1950.

Mallallappa Vir Bhadrappa Deshpande ... Plaintiff.

vs.

The State of Bombay. ... Defendant.

The following is the written statement of the defendant:

1. The defendant denies all the allegations made by the plaintiff in the plaint unless the same are expressly admitted herein.

2. The suit is barred under section 4 of the Revenue Jurisdiction Act and under similar provisions in force in Jamkhandi State before merger.

3. The suit is also barred by limitation.

4. The statutory notices served by the plaintiff before filing this suit are not legal and valid as they do not contain the plaintiff's description and address as required by section 80 of the Civil Procedure Code.

5. By merger of Jamkhandi State with Bombay State, the Bombay State has succeeded to the rights which were formerly possessed by Jamkhandi State. Levying of Nazrana is in the nature of an Act of State and as such the same cannot be challenged in Municipal Courts. The present suit is therefore barred on this ground also.

6. It is not true that the order passed by the Ruler of Jamkhandi State levying the Dattak Nazrana of Rs.3837-4-7 was illegal as alleged by the plaintiff. The said order was perfectly legal and valid and is binding on the plaintiff.

7. The defendant denies that the Jamkhandi Darbar ever agreed not to press, or to withdraw, its claim to levy the Nazrana in respect of the adoption of the plaintiff. Nor was the said order set aside by the Resident of Kolhapur and the Deccan States in appeal by the plaintiff's father. The plaintiff's father was merely informed by the Resident that when and if the Darbar preferred a claim to Nazrana on the occasion of the next succession his heir would be entitled to memorialise the British

Government after exhausting his remedy with the Darbar. Thus the Darbar's order levying the Nazrana remained undisturbed till the death of the plaintiff's father. The said order has not been reversed or set aside by any competent authority even after the death of the plaintiff's father and till the merger of the State of Jamkhandi with Bombay. Hence after merger the plaintiff became liable to pay the Nazrana amount to the defendant.

8. The defendant denies the various grounds pleaded by the plaintiff in para.7 of his plaint in challenging the order regarding the levy of Nazrana. It is not true that the rules obtaining in the Jamkhandi State regarding the levy of Nazrana were similar to those prevailing in Bombay State. In fact, the rules governing levy of Nazrana in Jamkhandi State were quite different from those in force in Bombay State. Nor would the fact that the plaintiff is a member of the same Watan family as his adoptive father make any difference as there was no rule in Jamkhandi State prohibiting the levy of Nazrana in case where the adopted son belonged to the same Watan family as his adoptee father. Nor would the fact of Jamkhandi's merger with Bombay make any difference on the plaintiff's liability to pay the Nazrana as under the Indian States (Application of Laws) Order, 1948, the Watan Act, as it obtained in Bombay, has not been made applicable to the merged States. The previous rules of Jamkhandi State as regards the levy of Nazrana are still in force in that area.

9. The Bombay Hereditary Offices Act, 1874 (Watan Act) had been extended to Jamkhandi State even prior to merger, but the rules framed under that Act by Bombay Government had not been extended to Jamkhandi State. Nor were there any Settlements in Jamkhandi similar to the ~~Government~~ Gordon Settlements in Bombay. It was only under the Gordon Settlement that the levy of the Dattak Nazrana was

discontinued in Bombay. In the absence of any similar provision in Jamkhandi State Dattak Nazrana could be legally levied in that State and the State had therefore framed its own rules for the levy of Dattak Nazrana. Those rules were legal and valid. They are still in force in Jamkhandi State area, as the Watan Act as it obtained in Bombay State is not extended to Jamkhandi area after merger. Hence the recovery of Dattak Nazrana from the plaintiff was legal and justified and the plaintiff has therefore no right to claim refund of the same.

10. The defendant denies that the plaintiff has any cause of action for bringing this suit.

For the above reasons it is prayed that this suit may be dismissed with costs.

District Government Pleader,
Dharwar

I, _____ District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This verification is made at _____ on the _____ day of_____ 1951.

District Government Pleader,
Dharwar.

HAP/-

19 31

discontinued in Bombay. In the absence of any similar provision in Jamkhandi State Dattak Nazrana could be legally levied in that State and the State had therefore framed its own rules for the levy of Dattak Nazrana. Those rules were legal and valid. They are still in force in Jamkhandi State area, as the Watan Act as it obtained in Bombay State is not extended to Jamkhandi area after merger. Hence the recovery of Dattak Nazrana from the plaintiff was legal and justified and the plaintiff has therefore no right to claim refund of the same.

10. The defendant denies that the plaintiff has any cause of action for bringing this suit.

For the above reasons it is prayed that this suit may be dismissed with costs.

District Government Pleader,
Dharwar.

I, _____ District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This verification is made at _____ on the _____ day of_____ 1951.

District Government Pleader,
Dharwar.

HAP/-

21 (22)

Legal Department.

Dharwar Civil Suit No.345 of 1950.

...

The plaintiff in this suit claims a sum of Rs.3837-4-7 as the refund of the amount of Dattak Nazrana recovered from him by Govt. pursuant to an order passed by former Jamkhandi State. The suit is defensible on technical grounds and also on merits, and its defence may be sanctioned on lines of the accompanying bfief. A written statement covering the grounds of defence taken in the brief has already been sent to the D.G.P.

MAP/-

S. M. Khatri.
11-9-51.

Sol.(Actg.) approved as amended.
11/9/51

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
12 SEP 1951

No. 14517.
D/12-9-51.

Secy. R.D. 12/9

BOMBAY GOVERNMENT
LAW DEPARTMENT
1905
E/14-9-51

L D.
14 SEP 1951

No. 14821 - 23

Office of the
Remembrancer of ~~Legal~~ Affairs,
Bombay Castle (Bombay No.1), 18th Sept. 1951.

Subject: Dharwar. Civil Suit No. 345 of 1952

MEMORANDUM.

The District Government Pleader Dharwar is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the Written Statement~~ is sent herewith in advance.

Papers of the case in one file received from the Collector accompany.

For Remembrancer ~~of~~ Legal Affairs.

To

The District Government Pleader,

Dharwar

C.5.7.51.

Drafted for sign
HDC
17/9

Issued
18/9.

18-9.

GRLD NO 15378 Dated the 26th
ult 1917 sent to press on 3/10/17

Suits :

Dharwar.

For recovery of Rs. 3,837-4-7 as the refund of the amount of Dattak Nazarana.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 15378.

Bombay Castle, 26th September 1951.

Endorsement from the Collector of Dharwar, No. LAW 526, dated the 17th April 1951—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), DHARWAR.

CIVIL SUIT No. 345 OF 1950.

Mallappa Veerbhadrappa Deshpande ... ... Plaintiff ;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Dharwar, No. 14821, dated the 18th September 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

Original for

To

*The Revenue Department,

*The Collector of Dharwar,

The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Submd. after issue

File no S. Dharwar/57

24/1/52

A.S.Ok

27-39

DHARWAR CIVIL SUIT NO. 345 OF 1950.

Chronological Statement of Facts.

The plaintiff claims a sum of Rs. 3,837-4-7 as the refund of the amount of Dattak Nazrana recovered from him by Government. He also prays for future interest and for costs of the suit.

2. It appears that one Veerbhadrappa Mallappa Deshpande of Kundgol was a Watandar of Paragana Watan. As he had no issue he adopted the plaintiff as his son on 14th August 1936. In accordance with the rules prevalent in former Jamkhandi State a Watandar had to pay a Nazrana to the State when there was an adoption in the Watan family. Accordingly by an order dated 22nd February 1938, the said Veerbhadrappa was required by the Darbar to pay a sum of Rs. 3,837-4-7 as Dattak Nazrana. This order was not complied with by Veerbhadrappa who challenged the Darbar's right to levy Nazrana. He appealed against this order to the Resident for Kolhapur and Deccan States, and the Resident informed him on 10th February 1941 that if and when the Darbar preferred a claim to the Nazrana on the occasion of the next succession his heir would be entitled to memorialise the British Government after exhausting his remedy with the Darbar. The matter rested there till the death of Veerbhadrappa which took place on 21st February 1948. Thereafter the plaintiff claiming to be the adopted son of the deceased applied to the Collector to enter his name in the village Records of Paragana Watan of Kundgol Deshpande. The Collector then passed an order that the plaintiff's name should be entered in the village Record only after recovering the Nazrana. The plaintiff's applications to the Revenue Authorities that no Nazrana should be recovered from him being of no avail he gave a notice dated 5th August 1950 under section 80 of the Civil Procedure Code. In the meanwhile Government recovered the sum of Rs. 3,837-4-7 as Nazrana from him on 7th September 1950. The plaintiff then gave another notice on 17th October 1950 demanding refund of the said amount, but as the same was not refunded he filed the present suit for the above reliefs.

Grounds of Defence.

1. *Notice.*—The notices sent by the plaintiff before filing this suit are dated 5th August 1950 and 17th October 1950. Neither of these notices contains the description and address of the plaintiff as required by section 80 of the Civil Procedure Code, the provisions of which are mandatory and have to be strictly complied with. Hence it should be contended that the notices on which the present suit is based are not legal and valid, and therefore this suit must fail.

2. *Limitation.*—The plaintiff is clearly not entitled to the reliefs sought by him in this suit unless the order passed by Government of former Jamkhandi State requiring his adoptive father to pay a sum of Rs. 3,837-4-7 as Dattak Nazrana is first set aside. That order was passed on 22nd February 1938. Under

section 14 of the Limitation Act which had been extended to Jamkhandi a suit to set aside an act done or order passed by an Officer of Government in his official capacity is to be filed within one year from the date of the act or order complained of. As the present suit was filed long after the Darbar's order levying Nazrana it should be urged that the suit is barred by limitation.

3. *Bar of Revenue Jurisdiction Act.*—This is virtually a suit to set aside or avoid an order passed under the Hereditary Offices Act and the Rules framed thereunder by the Jamkhandi State. It should be urged that such a suit is expressly barred under section 4 of the Bombay Revenue Jurisdiction Act. That Act had also been extended to the State of Jamkhandi.

4. It should also be contended that by merger of Jamkhandi State with Bombay State, Bombay State has succeeded to the rights which were formerly possessed by Jamkhandi State. Levying of Nazrana is in the nature of an Act of State and, as such, the same cannot be challenged in Municipal Courts. The present suit is, therefore, barred on this ground also.

5. *Merits.*—The plaintiff has alleged that the order passed by the Ruler of Jamkhandi State levying Dattak Nazrana of Rs. 3,837-4-7 was illegal. This allegation should be specifically denied and it should be urged that the said order was perfectly legal and valid and is fully binding on the plaintiff. It should also be denied that the Jamkhandi Darbar had ever agreed not to press or to withdraw its claim to levy Nazrana in respect of the adoption of the plaintiff. Nor was the said order set aside by the Resident of Kolhapur and the Deccan States in appeal by the plaintiff's father. The plaintiff's father was merely informed by the Resident that if and when the Darbar preferred a claim to the Nazrana on the occasion of the next succession the heir would be entitled to memorialise the British Government after exhausting his remedy with the Darbar. Thus the Darbar's order levying Nazrana remained undisturbed right till the death of the plaintiff's father. It should be urged that the said order has not been reversed or set aside by any competent authority even after the death of plaintiff's father and till the merger of the State of Jamkhandi with Bombay. Hence after merger the plaintiff became liable to pay the Nazrana amount to the defendant.

6. The various grounds set forth by the plaintiff in paragraph 7 of his plaint for challenging the order regarding the levy of Nazrana should also be denied. It should be urged that the rules obtaining in the Jamkhandi State regarding levy of Dattak Nazrana were quite different from those prevailing in Bombay State. The fact that the plaintiff is a member of the same Watan family as his adoptive father would not make any difference as there was no rule in Jamkhandi State prohibiting the levy of Nazrana in cases where the adopted son belonged to the same Watan family as his adoptive father. Nor would the fact of Jamkhandi's merger with Bombay make any difference to the plaintiff's liability to pay the Nazrana, as under the Indian States (Application of Laws) Order, 1948, the Watan Act as it obtains in Bombay and the Rules framed thereunder have not been made applicable to

the merged States. The previous rules of the Jamkhandi State as regards levy of Dattak Nazrana are still in force in that area.

7. It should further be urged that though the Bombay Hereditary Offices Act, 1874 (Watan Act) had been extended to Jamkhandi State even prior to merger the Rules framed and Resolutions passed under that Act by the Bombay Government had not been extended to Jamkhandi State. Nor were there any Settlements in Jamkhandi similar to the Gordon Settlements in Bombay. It was only under the Gordon Settlement that the levy of Dattak Nazrana was discontinued in Bombay, see Watan Act by Phadnis, page 235, in this connection. In absence of any similar provision in Jamkhandi State, Dattak Nazrana could be legally levied in that State and the State had framed its own rules for the levy thereof. Those rules were perfectly legal and valid. They are still in force in Jamkhandi State area as the Watan Act as it obtains in Bombay State is not extended to Jamkhandi area after merger. Hence the recovery of Nazrana from the plaintiff is legal and justified, and the plaintiff has therefore no right to claim refund of the same.

8. For all these reasons it should be submitted that the plaintiff has no cause of action at all against this defendant in this suit, and that he is not entitled to the reliefs sought by him. His suit, therefore, should be dismissed with costs.

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d no 29. dated 22-2-52
Office of the Sub Govt-
Pleader Hubli

To,

The Remembrancer of Legal
Affairs Bombay.

Subject :- Ref. no 345/50 of the Hubli Court.

Ref :- your no. 16350 of 7th Sept-1951.

Sir,

With ref. to the above suit I have
to submit that the suit is fixed for
hearing in the second week of march
1952. Since the burden of proof
of existing laws in the Jamakhandi
State to levy Nazarana, is put on
the Def. I request you to supply me
the authorities referred to in the
W.S. & the grounds of defence,
as they are not to be found elsewhere.

1) Darbar's order for levying Nazarana
2) Authority to levy the same i.e Rules
for levying of Nazarana in the State
3) Authority to show that the Walan Act
& not the rules under the Act were
extended to Jamakhandi State.
4) The Rules to levy Dattak Nazarana
are still in force in Jamakhandi State
area.
5) The Indian States (Application of Laws)
Act of 1948.

L. D.
21. 1952
E

RY TO C
DEPAR
No. 4224
28/2/52
E

6). the Jamakhandi Gazetteer relating to the dates in question.

The authorities are necessary to quote in the court. Hence I request you to supply me the same as early as possible.

Yours faithfully
B.M. Kadadi
Adv.

LD
Pl. see above letter from S.G.P. Hubli.
He may be asked to write to the Coll. of Dharwar in the matter.
AC
3/3
A Sols

The Subordinate pleader may obtain the papers of Jamakhandi section if necessary from the Collector of Dharwar, as all the papers required in this case have already been extracted by this office.

Sd
3-3.

Sol. (Jur.) 4-3-125

No. 3761. 33 ~~45~~

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 10th March 1952.

Subject:- C. S. No. 345 of 1950.

MEMORANDUM.

With reference to his letter No. 29, dated the 22nd February 1952, on the above subject, the Subordinate Government Pleader, Hubli is requested to ~~write to~~ Contact the Collector of Dharwar for the papers and authorities required by him.

For Remembrancer of Legal Affairs.

10.3.

To

The Subordinate Government Pleader,
Hubli.

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No. 558 dated 17 July '52,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject :- L.C.Suit No.345 of 1950 - Hubli (Dharwar)
G.R.L.D. No. 15378 dated 26-9-1951.

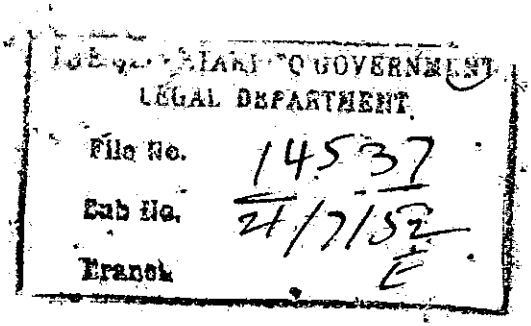
Sir,

In continuation of this office No.557 dated 7-7-1952, I have the honour to send herewith ~~xxxx~~ an uncertified copy each of the judgment and decree in the above suit.

Yours faithfully,

R mbatt.

Dist. Govt. Pleader.



Dharwar cs No 345/50.
is dismissed with costs
Copy of judgment is need
Result : may be recorded

AC
26/7

Adl (M) 26-7

-49 37

Filed on :- 22-12-1950.

Registered on :- 22-12-1950.

Decided on :- 25-6-1952.

Duration :- One year, 6 months and 3 days.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION

At Hubli. Ex.41.

Pleaders.

Long Cause ~~suit~~ Civil suit No. 345 of 1950.

Shri. M. Krishnaswami & Shri.Bommayi

1. Mallappa Veerabhadrappa Deshapande, caste, Hindu, age about 24, occupation Watani mahivat, residence Kundgol (Dharwar Dist) ..... Plaintiff.

Against.

Shri.Mathad.

1. The State of Bombay through the Collector of Dharwar..... Defendants.

Rs 3837-4-7 for Court-ffes and jurisdiction.

The plff sues to recover Rs 3,837-4-7 from the defendant and costs of the suit and future interestas the amount was illegally and wrongfully recovered from him by the defendant.

2. He states that he is a Paragana watandar owning considerable property in the Kundgol Mahal and Bankapur Taluka and that he was adopted by his paternal uncle Virabhadrappa Mallappa Deshapande on or about 14-8-1936 and a registered deed of adoption was executed in his favour and the fact of adoption was intimated to the ruler of Jamkhandi State and he passed an order to levy nazrana of Rs 3,837-4-7 from Virabhadrappa in 1938 for recognising his adoption. He says that the order was illegal and untenable as there was the adoption by Virabhadrappa of a member of the same watan family and that Virabhadrappa approached the

resident at Kolhapur as the representayive of the then paramount Power and prayed for an inquiry into the matter and the Resident asked the Jamkhandi Darbar to substantiate its right to levy nazrana as it looked obviously illegal and wrongful and this rightcould not be substantiated and the Darbar with a view to get out of this uncomfortable position proposed not to press its claim against Virabhadrappa just then and suggested that the question of legality and competency of the State to levy nazrana need not be considered at that time and the State with-drew its claim to recover nazrana from Virabhadreppa and therefore, the Resident sent an intimation that as the state did not press its claim to levy Nazrana at that time from Virabhadrappa there was no need to inquire into the legality or competency of the claim. He states that as Virabhadrappa suspected the bona fides of this move on the part of the State he requested the Resident to inquire into the question of the legality of the claim and to give a final decision and the Resident thought that the inquiry was premature in view of the Rulers undertaking not to levy nazrana from Virabhadrappa and to ally the suspicions of Virabhadrappa assured him x that when and if the Darbar levied the Nazrana, Virabhadrappa would have the right to memorialize the British Government after exhausting his remedy with the State. He states that after this intimation the proceedings were filed and the Darbar did not make any further attempt to levy Nazrana and Virabhadrappa died on 21-2-1948 and the plff as his adopted son applied on 16-3-1948 to enter his name in the Reverme Records as the son and heir of Virabhadrappa. He states that when his application was submitted the then Mahalkari of Kundgol reported to the Prant Officer, Savanur, recommending levy of Nazrana of Rs 3837-4-7 from the plff. He states that by that time the State of Jamkhandi was merged in Bombay State and original records of the Jamkhandi Darbar relating to the matter were not forth-coming and therefore, the plff submitted his objections against the levy on 5-7-1949 explaining the correct legal position and produced the relevant papers. He states that the village officers of Kundgol informed him on 29-12-1949 that an order was issued to them by the Mahalkari of Kundgol to collect nazrana and they began to press him for the payment of the same and the plff approached the Prant Officer and the Collector of Dharwar to have this illegal and

untenable order of levy vacated but he did not succeed and the plff then approached the Government of Bombay by a petition dated 17-4-1950 detailing the facts of the case and that petition was rejected by the Government without affording him an opportunity to substantiate his contentions. He states that this decision of the Government was communicated to him by letter dated 26-7-1950 and then the plff sent a notice under section 80 of the Civil Procedure Code on 5-8-1950 and therefore Rs 3,837-4-7 were recovered from him and he paid the amount under protest on 7-9-1950. He states that thereafter he sent another notice protesting against the wrongful levy on 17-10-1950 and he requested the Government to order return of the same failing which he intimated his intention of filing a suit for recovering the amount levied and no reply was sent to him. He states that the order is illegal and void because the order proceeded on the wrong assumption that the Watan Act was not made applicable to the Jamkhandi State area and the administrative reports of the Jamkhandi State show that the provisions of the said Act were adopted by the State as far as the year 1876. He states that it is wrong to assume that the rules obtaining in the Jamkhandi State regarding levy of nazrana were different from the rules obtaining in Bombay State and the fact that the plff is a member of the same watan family has been ignored and the several Government Resolutions prohibiting levy of nazrana in the case of adoption by a watandar of a member of the same watan have escaped the attention of Government. He states that when the Jamkhandi Darbar attempted to levy nazrana the right of the State was questioned by the adoptive father of the plff and the claim was withdrawn and this fact ought to have satisfied the Government that there was no substance in the claim and that when the claim set up by the Jamkhandi Darbar was withdrawn and when there was subsequently a merger of Jamkhandi State in Bombay State, Government would not be competent to reassert the right as that right lapsed with the merger of the State in Bombay State. He states that as after merger the Jamkhandi State has become a part of the Bombay State, and,

therefore, the territorial law of the Bombay State would be the only law that could be applied and enforced in the territories of the Bombay State and no law inconsistent with the territorial law could be invoked or applied and no right existed in favour of the Jamkhandi State at the time of the merger to levy nazrana in such cases. He says that the Darbar had withdrawn its claim once and it was not competent to the State of Bombay to re-open such dead claims.

3. The defendant states at Ex.15 that the suit is barred under section 4 of the Revenue Jurisdiction Act and under similar provisions in force in Jamkhandi State before merger and the suit is barred by limitation. He states that the statutory notices xxxxx served by the plff bef re filing this suit are not legal and valid as they do not contain the plff's description and address as required by section 80 of the Civil Procedure Code. He states that by merger of Jamkhandi State with the Bombay State the latter succeeded to the rights which were formerly possessed by Jamkhandi State and the levying of nazrana is in the natire of an Act of State and as such the same cannot be challenged in Municipal Courts and therefore the suit is barred on that ground also. He states that it is not true that the order passed by the ruler of the Jamkhandi State levying the Dattak Nazrana was illegal and the order is legal and valid and binding on the plff. He states that the Jamkhandi Darbar never agreed not to press or to withdraw its claim to levy the nazrana in aspect of the adoption of the plff and the order was not set aside by the Resident of Kolhapur in appeal. He states that the plff's father was merely informed by the Resident that when and if the Darbar preferred a claim to the Nazrana on the occassion of a next succession the heir would be entitled to memorialise the British Government after exhausting his remedy with the Dar bar. He states that the order has not been reversed or set aside by any competent authority. He states that after merger the plff became liable to pay the nazrana amountto the defendant and the defendant denies the grounds alleged in para 7 of the plaint. He states that it is not true that the rules obtaining in the Jamkhandi State regarding the levy of nazrana were similar to

those prevailing in Bombay State, and that the rules governing the levy of nazrana in Jamkhnadi State were quite different from those in Bombay State. He states that the fact that the plff was the brother's son of Virabhadrappa before adoption does not make any difference and the fact of merger of Jamkhandi State with the Bombay State does not make any difference regarding the plff's liability to pay the nazrana. He states that under the Indian States (Application of Lews) Order of 1948, the Watan Act as it is obtained in Bombay State has not been made applicable to the merged states. He states that the previous rules of Jamkhandi State as regards the levy of Nazrana are still in force in that area. He states that the Watan Act had been extended to Jamkhandi State even prior to the merger but the rules framed by the Bombay Government were not extended to Jamkhandi State and there were no settlements like Gordon Settlements in Jamkhandi State similar to those in existence in Bombay State. He states that it was only under the Gordon Settlement that the levy of the Dattak nazrana was discontinued in Bombay State and in the absence of any similar provision in Jamkhnadi State Dattak Nazrana could be legally levied in that State and the State had, therefore, framed its own rules for the levy of Dattak Nazrana and these rules were legal and valid and they are still in force in Jamkhandi sate area, and, therefore, the plff has got no right to claim refund of the amount and he has no cause of action for the suit which should be dismissed with costs.

4. On these contentions, the following issues are raised at Ex. 16 :-

1. Is the suit barred under section 4 of the Revenue Jurisdiction Act ?
2. Is the suit in time ?
3. Are the notices under section 80 C.P.C. legal and valid ?
4. Has the Court no jurisdiction to try the suit as contended in para 6 of Ex. 15 ?
5. Was the order passed by the Ruler of Jamkhandi State illegal ?

6. Is the order levying nazrana after merger illegal and invalid as alleged in para 7 of the plaint ?

7. What were the rules and law in Jamkhandi State ?

8. Are they still in force under the Indian States (Application of Laws) Order 1948 ?

9. What is due to plff ?

10. What order ?

My findings are :-

1. No. 2 :- Yes.

3. Yes. 4 :- The Court has jurisdiction to try the suit;

5:- As given below; 6 :- No;

7:- As given below; 8 :- Yes;

9:- Nothing; 10 :- As given below.

Reasons.

Issue No. 1 :-

5. It is stated for defendant that the suit is barred under section 4 of the Revenue Jurisdiction Act and under similar provisions in force in the Jamkhandi State before merger. It is not shown for the defendant as to how the levying of nazrana against a Watandar after an adoption cannot be questioned by the watandar or his adopted son as alleged. There is no provision of law barring the remedy of the plff. Therefore, I find the issue in the negative.

Issue No.2 :-

6. The plff has stated in the plaint that after he got an intimation from the village officers he moved the Prant Officer and the Collector of Dharwar and they decided the matter against him and that , therefore, he made a petition to Government on 17-4-1950 and the Government communicated to him by a letter dated 26-7-1950 that his petition was rejected. The plff ~~xx~~ gave one notice to the Government and thereafter the amount was recovered from him and thereafter the amount was recovered from him and thereafter he gave the second notice and thereafter he has filed the present suit. The copies of notices are at Exs. 32 and 33. The facts of the case go to show that the suit is in time.

Issue No. 3 :-

7. The notices given by the plff to the deft are at Exs. 32 and 33. It is stated for the defendant that the description as required under section 80 Civil Procedure Code is not given by the plff in those notices. The notices are clear and they show that what is necessary under section 80 of the Civil Procedure Code has been done for the plff. Therefore, I find the issue in the affirmative.

Issue No. 4 :-

8. It is stated for the defendant in para 5 of Ex.15 that the Jamkhandi State was merged in Bombay State and that the Bombay State succeeded to the rights which were formerly possessed by the Jamkhandi State, and that levying of nazrana was an act of State, and that the same could not be challenged in Municipal Courts. There is no authority shown for the defendant for the proposition ~~in~~ that levying of Nazrana was an act of State and that such acts cannot be challenged in a Civil Court. Therefore, I find that the Court has jurisdiction to try the suit.

Issue No. 5 :-

9. No copy of the order passed by the Jamkhandi Ruler is produced in the case. After that order the adoptive father of the plff filed an appeal to the Resident at Kolhapur and copies of orders passed by him are at Exs. 30 and 31. In Ex.30 it is stated " the petitioner is informed that in conformity with the request made by him in para 5 of his supplementary petition dated the 11th of July 1940, the question of recovery of nazrana will be deferred by the Jamkhandi Darbar until the question of succession actually arises". In Ex. 31 it is stated " the applicant is informed that his original prayer referred to the competency of the Darbar levying nazrana on the occassion of his adopting a son in 1936. The applicant will observe that that question is no longer under consideration. When and if the Darbar prefer a claim to Nazrana on the occassion of the next succession his heir will be entitled to memorialise the British

Government after exhausting his remedy with the Darbar. For the present it would be premature to consider this point". Therefore, it is seen that the Jamkhandi State had no right to pass an order levying nazrana on the date when the adoption took place, and, therefore, the order passed soon after adoption was illegal.

Issues Nos. 6 to 8.

10. It is stated for the plff that the Jamkhandi State was recognised by the British Government after a treaty and that the Jamkhandi State was to be a Jahagir under the British Government, and, therefore , the Jamakhandi State had no rights to levy nazrana as in the present case. It is true that there was a treaty between the Jamkahndi State and the British Government. It is also true that the ancestors of the plff were in the Jamkhandi State and they had acquired the property before the Jamkhandi State came into existence. The Jamkhandi State had full rights and the Ruler had absolute powers as a Ruler to the protection of the British Government and the Jamakhandi State was restricted in its rights regarding dealing with foreign powers and such other matters. The Jamkhandi State could make laws and administer them. Therefore, it cannot be said that the Jamkhandi State had no right at all to levy nazrana, if it had already passed laws and made rules thereunder. From the facts stated by the parties it is seen that the Watan Act as existing in Bombay State was made applicable to the Jamkhandi State in about 1876 but the rules made by the Bombay State were not made applicable by the Jamkhandi State. The defendant has produced copies of the rules framed by the Jamkhandi State in this case and they show that the Jamkhandi state had a right to levy nazrana after an adoption. These rules were kept in tact by the Bombay State when the Indian States Order, 1948 was made. Therefore, I find that the order levying nazrana after merger is not illegal and invalid as alleged for the plff and that the rules and laws in existence in the Jamkhandi State regarding the levying of nazrana are as stated in the extracts produced for the defendant, and that those rules are still in force.

Issue No. 9 :

Issue No. 9 :-

11. In view of the findings on the above issues,

I find that the plff is not entitled to get any money from the defendant.

O R D E R.

The suit is dismissed. The plaintiff shall pay the costs of the defendant and he shall bear his own.

25-6-1952.

Sd. B.A.Chougle.
Civil Judge, Senior Division.

Typed by Compared by True Copy

Clerk of the Court.

Copy was applied for on the ( ) June 1952 in person.

49 — 54

Clerk of the Court.

Copy was ready for delivery on the ( ) July 1952 ..

Clerk of the Court.

Copy was .

Clerk of the Court.

Decree.

In the Court of the Civil Judge, Senior Division, at Hubli. Ex. No.

L. C. Suit No. 345 of 1950 .

Plaintiff :- Mallappa Veerabhadrappa Deshpande, caste Hindu, age about 24, occupation Watani Wahiwat, resident of Kundgol (Dharwar District) .

Versus.

Defendant :- The State of Bombay .
Through the Collector of Dharwar .
Value of the suit claim for Court Fees and Jurisdiction Rs.3837/4/7.

The plaintiff abovenamed begs to submit the following:-

1. That the plaintiff is a Paragana Watandar owning considerable property in Kundgol Mahal and Bankapur Taluka .

2. That he was adopted by his paternal uncle late Veerbhadrappa Mallappa Deshpande, the predecessor-in-title to the said Paragana watan estate on or about 14-8-1936 and a registered deed of adoption was executed in his favour .

3. That when the fact of this adoption was intimated to the Ruler of Jamkhandi according to the custom that was obtaining on the State, the said Ruler passed an order to levy Nazarana of Rs. 3837/4/7 from the late Veerabhadrappa Deshpande in about 1938 for recognising this adoption .

4. As this order levying Nazarana was illegal and untenable as the adoption of a member of the same watan family (the plaintiff being the natural brother's son of the adopting watandar) the said Veerabhadrappa Deshpande approached the Rajesaheb of Jamkhandi with a request to vacate the said order .

As the Ruler illegally and wrongfully insisted on collecting the same, the said Veerabhadrappa approached the Hon'ble the Resident of Kolhapur as the representative of the then paramount power and prayed for an inquiry into the matter and the Hon'ble the Resident asked the Jamkahandi Darbar to substantiate its - right to levy Nazarana as it looked obviously illegal and wrongful. As this right could not be substantiated with a view to get out of this uncomfortable position, the Darbar proposed not to press its claim against Veerabhadrappa just then and suggested that the question of the legality and comptaency of the State to levy Nazarana need not be considered just then. As the State withdrew its claim to recover Nazarana from Veerabhadrappa, the Hon'ble The Resident sent an intimation to him that as the State did not press ~~in~~ its claim to levy Nazarana just then from Veerabhadrappa, there was no need to inquire into the legality or competency of the claim. As the said ~~x~~ Veerbhadrappa suspected the bona fides of this move on the part of the State; he requested the Hon'ble the Resident to inquire into the question of the legality of the claim and give a final decision then only. The Residence , however, considered the enquiry as premature in view of the Ruler's undertaking not to levy Nazarana from Veerbhadrappa, and to ally the suspicions of Veerabhadrappa assured him that when and if the Darbar levies Nazarana the petitioner will have the right to memorialise the British Government after exhausting his - remedy with the State . With this intimation the proceedings were filed and the Darbar did not make ~~x~~ any further attempt to levy Nazarana .

5. The said Veerabhadrappa died on or about 21-2-1948 and the plff as his adopted son applied on 16-3-1948 to have his name entered in the Revenue Records as the son and heir of Veerabhadrappa . When this application was submitted, the then Mahalkari of Kundgol seems to have reported to the Prant Officer, Savanur, recommending levy of Nazarana of - Rs. 3837/4/7 from the Plaintiff. As by then the State of Jamkhandi was merged in Bombay State, and original records of the Jamkhandi Darbar relating to this matter were not forthcoming, the plff

submitted his objections against the levy on 6-7-1949 explaining the correct legal position and produced the relevant papers . The Village Officers of Kundgol, however, informed him on 29-12-1949 that an order was issued to them by the Mahalkari-Mahalkari of Kundgol to collect Nazarana and began to press him for payment of the same. Though the plaintiff approached the Prant Officer and the Collector of Dharwar to have this illegal and untenable order of levy vacated he did not succeed. The plaintiff then approached the Government of Bombay by a petition dated 17-4-1950, detailing the facts of the case, and even this petition was rejected by the Government without even affording him an opportunity to substantiate his contentions. This decision of the Government was communicated to him by a letter dated 26-7-1950 .

6. Thereafter, though the plaintiff sent a notice under section 80 of the Civil Procedure Code on or about 8/8/1950 setting out his contentions, no action was taken by the Government to give him relief. Not only this. Even after the said notice was sent intimating the Government of the plff's intention to file a suit against the Government, the local officers pressed the plff for payment of the Nazarana, and the plff paid the amount of Rs. 4/7/0 to the Sub-Treasury at Kundgol under protest on or about 7-9-1950. The plaintiff then sent another notice protesting against the wrongful levy on 17-10-1950 and requested Government to order return of the same failing which he intimated his intention of filing a suit for recovering the amount thus levied. For this notice no reply is sent by the Government. Hence the suit .

7. The plaintiff respectfully submits that the order of levy of Nazarana from him is illegal and void for the following among other grounds : -

a) The order of levy seems to have proceeded on the wrong assumption that Act 3 of 1874 (Watan Act) is not applicable to Jamkhandi State area .

b) The Jamkhandi State Administrative Reports will show that the provisions of the said Act were adopted by the State as far back as 1876 .

c) It was wrong to assume that the rules obtaining in Jamkhandi State regarding levy of Nazarana were different from the rules obtaining in Bombay State .

d) The fact that the plff is a member of the same Watan family being the natural brother's son of the adopting watandar seems to have been ignored.

e) The several Government Resolutions prohibiting levy of Nazarana in the case of adoption by a watandar of a member of the same watan seem to have escaped the attention of the Government .

f) That when the Jamkhandi Darbar attempted to levy Nazarana the right of the State was questioned by the adoptive father of the plff and the claim was withdrawn . This fact ought to have satisfied the Government that there is no substance inthe claim .

g) ~~The~~ When the claim set up by the Jamkhandi Darbar was withdrawn and there is a subsequent merger of Jamkhandi in Bombay State in would not be competent to this Court to re-assert the right after merger, as any such right lapsed with the merger of the State in Bombay .

h) As after merger, Jamkhandi has become a ~~part~~ part of Bombay State, the territorial law of Bombay State would be the only law that could be applied and enforced in the territories of Bombay State. No other law consistent with the territorial law can be invoked or applied .

i) Moreover, as no right existed in favour of the Jamkhandi Darbar, at the time of merger to levy Nazarana in such cases, as the Darbar had withdrawn its claim ~~once~~ once, it would not be competent to the State of Bombay to reopen such dead claims .

8. The cause of action arose when the Government sent communication dated 26-5-1950 to the plff finally rejecting his prayer for vacating the order of levy of Nazarana, and on 7-9-1950 when the amount of Nazarana was paid into the Sub-Treasury at Kundgol under protest by the plaintiff.

9. As the plff is a resident of Kundgol, and this is a suit against the State of Bombay this Court being the principal Court of original jurisdiction, this Hon'ble ~~Cour~~ Court is competent to adjudicate upon the merits of the claim

10. The value of the claim for purposes of Court fees is Rs. 3837/4/7 being the amount actually recovered fromthe plaintiff . The value ~~s~~ for purposes of jurisdiction is the same

11. The claim of the plff is in time .

12. Therefore it is most respectfully prayed that ~~the~~ this Hon'ble Court may be pleased to grant a decree to the plff for the amount of Rs. 3837/4/7 illegally and wrongfully recovered from him by the Government, grant him future interest on the said amount till actual payment is made to him at 6%, grant him costs of the suit with such further or other relief that ~~the~~ this Hon'ble Court may deem fit to grant in view of the peculiar circumstances of the case .

This suit coming for hearing before Shri. B. A. Chougule, B. A., LL. B., Civil Judge, Senior Division Hubli in the presence of M/s. M. Krishnaswami, R.R. Nadgir and Bommayi, for plff and Shri. B. R. Mathad, Sub-Government Pleader for the deft it is ordered and decreed as follows : -

The suit is dismissed. The plaintiff shall pay the costs of the defendant and he shall bear his own .

Bill of Costs.

Bill of Costs.

Plaintiff.		Defendant.	
Stamps for plaint	Rs. 275/0/0.	Stamps for applications and documents. Exs. 6,8,9,10,11,12, 13,14,35,36,37,38, 39.	8/2/0.
" for Vakalatanama.	0/10/0.		
Bhatta Ex. 1.	4/6/0.		
Stamps for applications. Exs. 17, 18,19, 34.	2/8/0.	Pleader's fees on Rs. 3337/4/7.	155/2/3.
Pleader's fees on Rs. 3337/4/7.	155/2/3.		
	437/10/3.		163/4/3.
Disallowed.		Disallowed.	
Ex. 17,18,19, 34.	2/8/0.	Exs. 6,8,9,10,11,12, 13, 14, 35.	5/10/0.
Total.	435/2/3.	Total.	157/10/3.

Given under my hand and seal of the Court this 25th day of June 1952.

Sd/- N.G. Meherwade. (Seal). Sd/- B. A. Chougule.

Karkun, Civil Judge, Senior Division,

Hubli. 28/6/52.

Plaintiff's pleader :- Shri. Krishnaswami and Bommai. Sd/- Bommai. Pl.

Defendant's pleader : Shri. B. R. Mathad. Sd/- B.R.Mathad.

Pleader.

65 55

Suits:
Dharwar.
For Recovery of Rs.3,837-4-7 as the refund of the amount of Dattak Nazarana.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 15674/E
Bombay Castle, 23rd September 1952.
Government Resolution, Legal Department,
Read ~~xxxxxx~~ No.15378 dated the 26th September 1951.

Letter from the District Government Pleader, Dharwar,

In the Court of the Civil Judge, (Senior Division), Dharwar. Civil Suit No.345 of 1950.	) No.557 dated the ~~xxx~~ 7th July 1952, stating
Mallappa Veerbhdrappa Deshpande .. Plaintiff; Vs. The State of Bombay. .. Defendant.	) that the suit noted in the margin was decided by the Civil Judge S.D., Hubli, on 25th June

1952, when the following order was passed:-

"The suit is dismissed. The Plaintiff shall pay the costs of the defendant and he shall bear his own".

Letter from the District Government Pleader, Dharwar No.598, dated the 17th July 1952, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

original R.T.Katarki

R.T.Katarki,
Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Dharwar,

The District Government Pleader, Dharwar.

VGP.

Subd to sign
AK.
20/9 D.S. (Civil)

Issued
23/9

57-79

Civil Appeal No.230 of 1952.

Received on
28-7-1952.
Sd/- C.O.C.

Exh. 1

In the Court of the District Judge, Dharwar.
At Dharwar.

Appellant :- Mallappa Veerbhadrappa Deshpande, Hindu, age 25, occupation Vatani vahiwat, residence Kundgol, District Dharwar.

Versus.

Respondent :- The State of Bombay (through the Collector of Dharwar.

Value of the Claim Rs.3387-4-7

Being aggrieved by the judgment and decree passed by the Civil Judge, Senior Divisio, Hubli, in L.C.Suit No.345 of 1950, on 26-6-1952, the appellant above named begs to appeal against the same on the following among other grounds :-

1. That the judgment and decree are against the law, weight of evidence and probabilities in the case.

2. The lower Court erred in thinking that Jakhanii State was an independent State ar therefore could pass any law.

3. Tl lower Court ought to have held that

power of legislation exercised by Jamkhandi State was subject to the terms of the treaty of grant in favour of the Ruler in 1819 by the Paramount power.

4. The lower Court erred in thinking that though Act 3 of 1874 of Bombay (Watan Act) was adopted by the Jamkhandi State, the Rules framed under the Watan Act were not adopted.

5. The lower Court erred in thinking that the rules framed by the Jamkhandi State under the Watan Act were different from the rules framed by the Bombay State.

6. In the absence of Gazette Notifications, the lower Court erred in relying on some private copies that were produced on the date of hearing by the defendant.

7. The lower Court ought to have granted some time to the plaintiff to meet the case of the defendant.

8. The lower Court erred in thinking that the Jamkhandi State had a right to levy Nazarana even in the case of adoption by a watandar of a member of the same Watan.

9. The Rules relied on for the defendant have not been correctly interpreted.

10. The lower Court having held that the Jamkhandi State had no right to levy Nazarana when the adoption was made, has erred in holding that such a right could be asserted when the succession opened.

59

11. The lower Court ought to have noticed the fact that the Bombay Watan Act having been adopted by Jamkhandi State, it was not competant to Jamkhandi State Darbar to do any thing inconsistent with the spirit of that Act.

12. The lower Court erred in holding that even after merger, the plaintiff is governed by the law of Jamkhandi State.

13. The lower Court ought to have held that after merger, the law of Bombay State applied.

14. The lower Court erred in ignoring the fact that only territorial law of Bombay State is administered by the Judiciary of Bombay; and foreign law would be applied only so far as it is not inconsistent or conflicting with the Bombay State law.

15. There is no proper appreciation of evidence.

16. Proper inferences are not drawn.

17. The lower Court erred in dismissing the claim of the plaintiff.

18. The appeal is in time.

Wherefore, it is most respectfully prayed that the appeal be allowed, the judgment and decree of the lower Court be set aside and this appellant be granted all the reliefs prayed for with costs throughout with such further or other relief that this Court may deem fit to grant in view of the peculiar circumstances of the case.

Drafted and Presented
By
S. Krishnaswamy,
28-7-19

157

61 - 83

No.813 dated 10 Sept.1952.
Office of the Dist.Govt.Pleader,
Dharwar.

To

The Remembrancer of Letal Affairs, Bombay.

Subject:-Civil Appeal No.230 of 1952 in L.C.Suit No.345 of 1950 - Hubli (Dwr). G.R.L.D.No.15378 dated 26/8/1951.

Sir,

I have the honour to inform you that I have been served with a Notice in the above appeal preferred by the plaintiff against the decision in L.C.Suit No.345 of 1950 - Hubli(Dharwar).

Please accord sanction to the defence of the said appeal on the lines of the brief accompanying G.R.L.D.No.15378 dated 26/8/1951 and on favourable grounds mentioned in the judgment of the lower Court.

Copy of the notice served on me, copies of the appeal and the judgment of the lower Court are sent herewith for your perusal which may please be returned when done with.

Yours faithfully,

Sd. x x
Dist.Govt.Pleader.

Fwd:W.cs.through the Collector, Dharwar, w/r to his No.LAW-526 dated 17/4/1951.

22568

25/9/52

Ep.t.o.

No.L.A.W.526.
Dharwar; 19/9/1952.

Copy with the accompaniments forwarded w.cs. to the Remembrancer of Legal Affairs, Bombay for favour of moving Government to accord sanction for the defence of the appeal.

for Collector, Dharwar.

a. 19/9.

L.D.
24 SEP 1952

L.D.

Please see the letter of the Collector of Dharwar above.

As regards the sanction may be accorded for the defence of Civil Appeal No. 230 of 1952 filed by him.

Addl.
29.9.52
Sol(M) 29/9

63 · 8

Suits:
Dharwar.
For recovery of Rs.3837-4-7 as the refund of the amount of Dattak Nazarana.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 20951/E
Bombay Castle 12th December 1952.

Read Government Resolution, Legal Department No.15674/E dated the 23rd September 1952.

Endorsement from the District Government Pleader,

In the Court of the Civil Judge (Senior Division), Dharwar.	Dharwar
Civil Suit No.345 of 1950.	No.813
Mallappa Veerbhadrappa Deshpande ... Plaintiff.	dated the
Vs.	
The State of Bombay. ... Defendant.	10th

September 1952 requesting Government's sanction to the defence of the First Appeal No.230/52 filed by the plaintiff in the suit noted in the margin.

Letter from the Collector of Dharwar No.L.A.W.526 dated the 11th September 1952 forwarding the above.

RESOLUTION: Sanction is accorded to the defence of First Appeal No.230/52 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Government Resolution, Legal Department No.15378 dated the 26th September 1951 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Hubli dated the 26th June 1952.

By order of the Governor of Bombay,

original R T Katarki

R.T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.

KUP: 4/12.

Joined 12/12

Submitted for signature 8/12

DS(Civil)

Submitted after issue

File in S. Dh'war. 11/51

Vhw
13/12

Sufdt. NB
13/12/51

S Dhr. 11/51

15/12

11/51.

No. 749 dated 16 Sept '53
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject :- C.A.No.230 of 1952 in L.C.Suit No. 345 of 1950 - Hubli (Dharwar)

Reference- G.R.L.D.Nos.20951/E dated 12-12-52 and 15378 dated 26-9-1951

Sir,

I have the honour to inform you that the above appeal was heard by the Assistant Judge and the following order was passed on 27-8-1953 :-

"In the result the decree of the lower Court is set aside and the plaintiff is given a decree for Rs.3837-4-7 with ~~him~~ interest at 4% from the date of the suit till recovery along with costs throughout."

22568
21/9/53
E

I am submitting my detailed report along with a copy of judgment in due course.

18 SEP 1953

Yours faithfully,

R M Patil

Dist. Govt. Pleader.

67 89

No. 1926 1/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 22-9 — 1953.

Subject:- C.A No. 230/52 in L.C. Suit no 345/51

MEMORANDUM:

With reference to his ~~endorsement~~ letter No. 749 dated the 16th Sept 1953, the District Government Pleader, Dharwar is requested to forward an unstamped copy of the judgment to this office immediately and to state what is the last date for filing an appeal.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Dharwar

W) - T1.

H3

Await copy of judgment.

VK
23/9

Sd/-

Section Officer

Typed paper book & an uncertified copy of judgment in C.M. No. 230/52 decided regarding the Govt. SDR 27-8-53 is put up for orders

VK
20/9 Sd/-

4369

Received on
Registered on
Decided on
Duration

In the Court of the Assistant Judge, Dharwar.
At Dharwar.

Civil Appeal No-230 of 1952, from the decree in L.C.Suit No.345 of 1950 of the Court of the Civil Judge, S.D., Hubli - (Shri.B.A.Chougule).

Pleaders :-

Shri.Krishnaswami.
" R.R.Nadgir.

Mallappa Virbhadrappa Deshpande,
of Kundgol, (Dharwar District)
------ Appellant (Or.plff).

Versus.

Shri.R.M.Patil,
D.G.P.

The State of Bombay.
------ Respondent (Or.deft).

Claim Rs.3387-4-7

Judgment

This is an appeal by the plaintiff from the judgment and decree of the learned Civil Judge, S.D., Hubli, dated 25-6-1952 dismissing the plaintiff's L.C.Suit No.345 of 1950.

2. The facts relevant for the purpose of deciding the issues involved are as follows :-

One Veerbhadrappa Mallappa Deshpande who was a paragana watandar in the Kundgol Mahal of the pre-merger Jamakhandi State adopted his brother's son, the present plaintiff, on 14-8-1936. In due course

he intimated this adoption to the Ruler of the Jamkhandi State who on 22-2-1938 informed through his Mamlatdar that he should pay a Nazarana of Rs.3837-4-7 on the adoption before 15-3-1938. Veerbhadrappa, it appears, disputed the levy and finally approached the Resident for Kolhapur and the Deccan States who by Exh.30 informed Veerbhadrappa as follows :-

" The Petitioner is informed that in conformity with the request made by him in para 5 of his supplementary petition dated the 11th June, 1940 the question of the recovery of Nazarana will be deferred by the Jamkhandi State Darbar until the question of succession actually arises."

Not being entirely satisfied by this order, the Resident was further moved by Veerbhadrappa, who received the order (Exh.31) dated 10th Feb 1941 reading as follows :-

" The applicant is informed that his original prayer referred to the competency of the Darbar to levy Nazarana on the occasion of his adopting a son in 1936. The applicant will observe that that question is no longer under consideration. When and if the Darbar prefer a claim to Nazarana on the occasion of the next succession his heir will be entitled to memorialise the British Government after exhausting his remedy with the Darbar. For the present it would be premature to consider this point."

As this order preserved the right of Veerbhadrappa to exhaust his own remedies with the Darbar and then to memorialise the British Government if and when the Darbar preferred a claim to Nazarana on the occasion of the next succession, nothing happened afterwards and the Jamakhandi State did not also press for the recovery of the nazarana.

3. On 21-2-1948 Veerbhadrappa died and the succession opened to the present plaintiff. On 8-3-1948

the Janakhandi State merged in the State of Bombay. On 16-3-1948 the plaintiff applied to the Collector of Dharwar for recording his name in the revenue records as the next Paragana Watandar. He was informed by Exh.21 by the Mamlatdar of Kundgol that he will have to pay the Dattaka Nazarana within 7-days in case he did not produce any order remitting the amount This letter is dated 8-7-1948. The matter was taken up by the plaintiff with the revenue authorites, but by an order dated 14-11-1948 the Secretary to the Government of Bombay, Revenue Department, declared that the recovery of Nazarana was legal (Exh.40). Steps were taken thereafter to levy the Nazarana inspite of representations made by the pcaintiff, and on 7-9-1950 the plaintiff paid the amount under protest. (See Exh.26). After giving the necessary notice to the State Government the plaintiff filed the suit on 22-12-1950 for the recovery of the money already paid under protest alleging that the levy was illegal and unauthorised. The state contested the suit and contended, inter alia, that the levy was authorised and legal. The learned Civil Judge held that the order levying the Nazarana after the merger was legal and valid in view of the law and the rule obtaining in Janakhandi State which continued to be in force after the merger under the Indian States (Application of Laws) Order, 1948. Accordingly he dismissed the suit.

4. The only point canvassed before me is about the legality of the levy. The learned Consel for the appellant contends that there is no law under which the State of Bombay may have levied this nazarana, while it is contended for the respondent-Government that the levy is legal and authorised. So the only issue for determination is :-

Whether the levy of the nazarana from the plaintiff on 7-9-1950 is legal ?

5. My finding is - In the negative.

Reasons

6. We have seen that the Resident had by his orders kept in abeyance the levy of the Nazarana from the plaintiff's father till his death and has also kept the question open till the next succession. Veerbhadrappa died on 21-2-1948 and before the Jamkhandi State could move in the matter of levy, the State itself was merged in the present Bombay State on 8-3-1948. The application for recognising him as Paragana Watandar was made by the plaintiff on 16-3-1948 to the authorities in Bombay State and it is the State of Bombay which has now ordered the levy of the nazarana and recovered the amount from the plaintiff. It is contended for the appellant that it is a misnomer to say that the State of Bombay has succeeded to the Jamkhandi State and all its rights against the subjects. By the merger the Jamkhandi State has merely estinguished itself and the State of Bombay cannot be deemed to be a successor as such. Therefore, it is argued, the State of Bombay when it levied the Nazarana from the plaintiff must do it under some law of its own, recognised and sacntioned by the Constition which is given themselves by the people of India, who resolved to constitute India into a Sovereign Democratic Republic. The question of succession to any Ruler of the Indian State merged in the Republic was, therefore, impertinent. It was pointed out that in the State of Bombay there is the Bombay Hereditary Offices Act (Watan Act of 1874), but under the rules and resolutions framed by the Government thereunder the levy of nazarana on an adoption of a member of the same watan family was not legal. (see

Resolution No.3539 dated 13-10-1863 referred to by Phadnis in his Watan Act ~~at~~ at page 234). Therefore, it is contended the Government of this State, bound by its own resolution, could not levy the nazarana. This aspect of the question cannot be controverted in view of Exh.40 which is the letter of the Secretary to the Government of Bombay, Revenue Department, dated 14-11-1949. It is argued therein that althogh Jamkhandi State has completely merged in this Province, the Watan Act as it is in force in this Province, had not been applied to the State area, with the result that the State Rules in respect of adoption and succession are still in force in that area. In other words, the Nazarana was sought to be levied not by reason of any independent power vested in the State, but by reason of the Jamakhandi State Rules in respect of adoption and succession, which are continued in force. In line with this argument the learned Government Pleader sought to show that there were such rules in force and it was under those rules that the nazarana was levied. It is no longer contended that the Bombay State has succeeded to the Jamakhandi State, and therefore, all its rights in regard to its subjects was vested in the State Government. It is, therefore, common ground that if there is no law which is prevelent in the State of Bombay in its limited application to the merged State ~~territories~~ territories the levy in this case made, after the constitution, on 7-9-1950 would be illegal.

7. In order to show what was the position regarding the law in these territories in the transitional stage I have been referred to two orders One is " The Administration of Deccan States Order, 1948," dated 2-3-1948 which came into force on

8-3-1948. The other order is known as 'The Indian States (Application of Laws) Order, 1948 dated 28th July, 1948. Para 4 of the first order provides :-

(1) Such provisions or such prts of provisions -

(a) Of any law relating to any of the matters enumerated in lists 2 and 3 in the 7th Schedule to the Government of India Act, 1935, or

(b) Of any Notification, order, scheme, rule, form, or by-law issued, made or prescribed under any of the clauses referred to in clause (a) as were in force immediately before the appointed day (8-3-1948) in any Deccan State shall continue in force until altered, repealed or amended by an order under the Extra Provincial Jurisdiction Act 1947 (Act of 47 of 1947).

8- It will be seen from this that laws relating to matters in lists 2 and 3 and notifications, orders and rules made or prescribed under such law which were already in force in the State would continue to have force. The lists referred to are the Provincial Legislative List and the Concurrent Legislative List. Entry No.6 in the Concurrent Legislative List includes adoption and Entry 25 refers to fees in respect of any of the matters in this part of this list, but not including fees taken in any Court. It is clear, therefore, that the Provincial Government has concurrent Legislative Jurisdiction with the Central Government to legislate in respect of a fee with regard to an adoption. Now Nazarana is defined in Wilson's Glossary as a gift, a present, especially from an inferior to a superior, but the term was more particularly applied to sums received as ~~gratuitous~~ gratuitous, although, in fact, exulted by the State on various occasions as fees, or fines upon an assignment of revenue to an individual or an appointment or succession to office or to a Jahagir or other possession although hereditary, also an exaction of

additional tribute from a tributery dependent or a contribution in excess of the usual revenue payment levied upon the people of the country in professed cases of emergency." The plaintiff's x father was a Paragana Watanadar. The sum of money recovered from the plaintiff is on his succession to the hereditary office of Pargana Watandar on adoption Therefore, nazarana in this case can be regarded as a fee exacted by the State for recognising the adoption xxx to the Hereditary office, in which case, it is clear it will fall within the concurrent list. It follows, therefore, that if there is any law relating to the levy of nazarana on adoption by the Jamkhandi State that law shall continue in force by virtue of paragraph 4 of this order until the same is altered, repealed, or amended. In other words, if a law in the Jamakhandi State prior to 8-3-1948 empowered that State to levy this particular type of Nazarana that law will continue in force until altered.

9. I am not referred to any other order under Extra Provincial Jurisdiction Act, 1947, or any other statute altering or repealing this order. The only other order to which reference has been made is the Indian States (Application of Laws) Order, 1948 dated 28th July, 1948. Paragraph 3 of this order applies certain enactments of the Central and Provincial Governments and orders, schemes, rules and bye-laws issued thereunder to the merged states. Paragraph 5 repeals those enactments in force in Indian States which corresponded to the enactments in force in the Province of Bombay and extended to such States under paragraph 3. This would mean that if there are two laws on the same subject one in the merged State

and the other in the Province of Bombay as specified in schedule II, the law in the State will be deemed to have been repealed. The Schedule does not refer to any Central or Provincial enactment dealing with adoption and the levy of Nazarana on adoption. Therefore, there is no question of any Act in the Schedule replacing the laws in the Indian State on that particular subject. Therefore. if there is a law in the State with regard to the levy of Nazarana on adoption that will not stand repealed by virtue of this Indian States (Application of Laws) Order, 1948. As I have said before, I am not referred to any other enactment or order taking away the effect if para 4 of the Administration of Deccan States Order, 1948, and therefore, I will have to hold that if there is a law in the States relating to adoption and the levy of nazarana on adoption that will be deemed to have continued in force. I must, however, add when coming to this conclusion that in the confusion which prevailed at the time of the merger of Orders and Acts might have been passed relating to various aspects of the Administration of merged territories. I should have been really glad if I was taken through all such orders so as to give me a connected picture of how the merger finnaly resulted so as to remove all [illegible] distinctions. But paucity of material on the subject, as placed before me, makes me come to the conclusion I have done, viz., that if there was in Jamkhandi State a law relating to the levy of nazarana on adoption that should continue in force.

5. The question then is whether such law was in force. It is not disputed before me that although the Chief of Jamkhandi was not an independent ruler and the State Jahagir was settled on him on certain terms in 1819 as given by Aitchison in Vol.VIII of his treaties page 262, the Chief had the right to legislate and pass laws for the better Government of

his subjects. Reference was made to Article 6 of this Treaty and it was pointed out that even the paramount power had ~~ex~~ undertaken when offering new Sanads to his descendants not to exact nazarana, and, therefore, the Chief also in his own turn could not have exacted Nazarana, especially when by Article 8 he was required to continue the Saranjams already existing. There is no dispute that the Parsgana Watan of the plaintiff is a very old Watan granted prior ~~to~~ to this Treaty. Therefore, it is argued, the Chief was not entitled to levy Nazarana. I do not think that there is much substance in this argument. If the paramount power does not want nazarana on succession to the Chief that is a matter between the paramount power and the Chief. The Treaty does not prohibit the levy of Nazarana on adoptions either to old Saranjams or to new Inams created prior or subsequent to the Treaty. Hence I see no objection in the Treaty itself to any legislation with regard to Nazarana by the Chief.

6. It cannot be also disputed that the Chief who was the Head of the Government had both legislative and executive functions. So, if he passed a law without the help of any Legislative Council, as such, that law would still be valid.

7. The question ultimately is whether there was any such law passed by the Chief, which imposed the liability to pay nazarana on adoptions. The learned counsel for the plaintiff contends that there was no such law. On the other hand, the learned Government Pleader contends that there was such law and in substantiation of his contention refers to Exhs.38, 36 and 39. I accept them as

true copies from the Jamakhandi State Gazette. Exh.38 is dated 7-1-1909. Exh.36 is dated 7-3-1910 and Exh.39 is dated 7-7-1915. It is contended for the appellant that all these are merely rules formulating the mode of recovery of nazaranas and do not by themselves impose the liability. It is argued that they do not create the liability but merely state how in any particular case where the liability is imposed the recovery shall be made. On the other hand, it is contended by the Government Pleader that these rules not only create or impose the liability but also indicate the mode of recovery. Having carefully gone through these 3 documents, I am satisfied that they do not purport to be legislation imposing the liability for nazarana, but merely deal with the question of recovery.

8. Special reference was made to rules 1 and 7 at Exh.38 and it was argued that these rules themselves impose the liability. I do not, however, agree. Rule 1 relates to the determination of the nazarana on the occasion when the same is to be charged in respect of adoptions in some specified cases including the adoptions by a paragana watandar. The rule says that where a Paragana Watandar etc. is liable to pay nazarana on the occasion of having the adopted son's name recorded in the Government or obtaining the consent, the nazarana to be recovered would be the net income of the land after paying the Judi. It does not create the liability but merely determines the amount when the liability is incurred. That is also the trend of the rest of the rules. Rule 6 says that the amount of Dattaka Nazarana is liable to be recovered as arrears of rent and rule 7 says that the power to remit nazarana or to make changes in the rules from time to time is vested in the Chief. Exh.36 is the form of a Circular requiring those who are liable to pay nazarana on adoption to inform the Government about the adoption as early as possible. It

DISTRICT COURT OF

also requires the village kamagars, on pain of being proceededx against, to inform the Government about any such adoption. Exh.39 deals principally with the question whether nazarana could be recovered from a Pot Inamdar. It says that where an adoption is made the nazarana shall be recovered from the Inamdar himself and not from the Pot Inamdar, but that the Inamdar would be given assistance to recover it from his Pot Inamdar. In my opinion, all these rules have nothing to do with the imposition of liability, but merely with the recovery of the same. It is not possible to argue by implication that there must be some legislation imposing the liability. Provisions of law cannot be proved by implication. It may well be that Pargana Watandars coming into existence prior to the Treaty might have been exempted from paying the nazarana, or for the matter of that, particular Watandars might have been expempted in that very law from paying nazarana. What must be affirmatively proved cannot be deemed to have been proved by implication. In my opinion, therefore, the rules now before the Court cannot be accepted as legislation on the question of the payment of nazarana by a Paragana Watandar on the occasion of of an adoption in his family. Apart from these rules I am not referred to any other legislation of the Jamkhandi State on the question and it must be, therefore, held that there was no legislation. And if there was no legislation, it could not continue in force under para 4 of the Administration of Deccan States Order referred to above.

9. Reference was made to the fact that the Provincial Government had given a decision as per Exh.40....

Exh.40 and so under para 14 of the Indian States (Application of Laws) Order, 1948, it was final and conclusive. There is no question of the application of that particular order or any of its provisions, nor can the Secretary's letter be regarded as a decision of the Provincial Government.

10. It was next contended that the plaintiff had not challanged the right to levy the nazarana on adoption, but that he wanted an exemption on the ground that he was a member of the same watan. In this connection reference is made to para 2, 3 and 4 of the plaint. In my opinion, however, when the plaintiff is read as a whole the plaintiff not merely questions the right to levy in general, but also the secondary question of his personal liability to pay as he was a member of the Watan of the adoptive family. Para 7 gives the reason why the plaintiff submitted that the order of the levy of nazarana was illegal and void. See for example 7(f) and (i). Even if it is assumed that the plaintiff claimed exemption on the ground of being a member of the same Watan that does not prevent him from showing that the levy itself in general was illegal.

11. As the State of Bombay recovered the amount unauthorisedly, the plaintiff is entitled to the refund of the same. No other ground has been pressed before me to prevent the plaintiff from making the claim.

12. In the result the decree of the lower Court is set aside and the plaintiff is given a decree for Rs.3837-4-7 with interest at 4 per cent from the date of the suit till recovery along with costs throughout.

27-8-1953.

Sd/- D.G.Palekar,
Assistant Judge, Dharwar.

Sol (M)

The dispute in this case related to the right of the Govt of Bombay to levy "Dattak Nazrana " in connection with an adoption made by a Paragana Watan dar of the former Jamkhnadi State.. The Govt of Bombay claimed the right under the Rules framed by the former Govt of Jamkhandi which were still in force. The plff disputed that right by filing a suit. The trial Court upheld the contention of the Govt and dismissed the suit . In the appeal filed by the plff a contrary view has been taken by the learned Assistant Judge, who passed a decree in favour of the plff for refund of the amount recovered from him as " Dattak Nazrana " The question for decision is if a second appeal may be filed in the High Court against that decision. The District Govt Pleader has expressed the view that this was a proper case for filing a second appeal.

The facts are these. One Veerbhadrappa held a Deshpande Watan. He adopted the present plff in 1938. He then applied to the Ruler of Jamkhandi for recogni tion of that adoption. The Ruler was willing to grant recognition to the adoption on payment of the necessary Nazrana leviable under the Rules. Veerbhadra appealed to the Resident against that decision. The Resident called upon the Ruler to justify his order, The Ruler then decided to postpone the levy till the succession had opened.

Veerbhadrappa died on 21-2-1948 . The State of Jamkhandi merged in Bombay on 8-3-1948 . The Mamlatdar of Kundgol then levied Dattak Nazrana as a condition for bringing the name of the plff on record in place of his father. The levy of Nazrana was confirmed by the Collector and by the Revenue Department. The plff paid the amount under protest and then filed the present suit. His main contention was that the Watan Act had been extended to the Jamkhandi State since 1876 and the levy of Nazrana was not justified under

that Act. He also urged that Nazrana was not leviable in his case as he belonged to the same Watandar family before his adoption. The Govt contended that although the Watan Act was in force in Jamkhandi State the matter in dispute was governed by the Rules framed by the Ruler in that behalf in 1908 .These Rules had the force of Law and the Ruler had been levying Nazrana under them till the date of merger. Those Rules were still in force and the levy was justified. It was immaterial that the plff belonged to the same Watandar family.

The trial Court held that the levy of Nazrana was justified under the Rules which were still in force. The plffs suit was therefore dismissed.

In the appeal filed by the plff the learned Asst. Judge held that the Rules framed by the Ruler of Jamkhandi had the force of Law and they were still in force. But as a matter of construction he thought that the Rules only indicated the manner of recovering the Nazrana and the method of calculating the amount of it. They did not themselves confer the right to levy the Nazrana. That right was not proved to have existed under any other Law or Rule still in force . He therefore declared that the levy was illegal and ordered the refund of the amount.

The view taken by the learned Assistant Judge seems to be open to question. The originall Rules are in Marathi and they were produced in Court. These Rules have been in vogue since 1909 and the Ruler of Jamkhandi had been levying Nazrana under the same all the while till the date of the merger of that State . The plff himself had not alleged that these Rules did not give the right to the Ruler to levy Nazrana . What he urged was that under those very Rules Nazrana was not leviable when the adopted boy belongs to the Watandar family. It was leviable only when the adopted boy was an outsider.

The proper construction of a Rule having the force of Law will be a point of law and a Second Appeal can properly lie on such a point. As the construction of the Nazrana Rules is a matter of vital importance to Govt this would be a proper case for going to the High Court for an authoritative interpretation of those Rules.

The Govt. Pleader High Court may be therefore instructed to file a Second Appeal against the decision of the learned Assistant Judge in this case.

SRL 25-11-53

R.L.A. 25/11

Secy.R.D. 26.11.53

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
26 NOV 1953

F 24 772
26. XI. 53

83 — 113

IMMEDIATE.

No. 23732/B

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1)
25th November 1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- C.A. No.230/52 in L.C.Suit No.345/50.

Sir,

With reference to the subject noted above, I have the honour to state that Government has decided to file a second appeal against the decision of the Assistant Judge, Dharwar dated the 27th August 1953 in the above appeal, you are, therefore, requested to take early steps to file an appeal in the High Court in time. A copy of office note on the case along with certified copies of judgments of the trial and appellate courts is sent herewith.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy forwarded with compliments to:-

The Collector of Dharwar,

The District Government Pleader, Dharwar.

KUP.
25/11.

85

Legal Department. 45

Submitted.

The Revenue Department may be informed that Government Pleader, High Court, Bombay, has been requested under this office letter No.23732/E, dated the 25th November 1953 to file a second appeal against the decision of the Assistant Judge, Dharwar, dated 27th August 1953 in Civil Appeal No.230/52. Civil Appeal No.230/52 was filed by the unsuccessful plaintiff Shri M.V.Deshpande in L.C.Suit No.345/50.

The Revenue Department File No.3326/49 may be returned to that Department with the above note.

Sec
28/11

Sol (M) SO.SIR
30/11

with R.D.No
W.3326/49

U.R to R.D No 24156/E dt 1.XII.53.

11/57

87/47

NO.
VERY URGENT:
EXPRESS DELIVERY

Office of the
Government Pleader, High Court,
Bombay, 2nd December 1953.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To

The Collector of Dharwar, At : DHARWAR.

Subject:- Filing of Second Appeal in the High Court in Civil Appeal No.230/52 in Civil L.Suit No.345/50.
The State of Bombay -VS- Mallappa Veerbhadrappa Deshpande. ... ...

Sir,

With reference to R.L.A.'s letter No.23732/E dated 25th November 1953, on the above subject, I have the honour to request you to send me certified and uncertified copies of Judgment in Civil L.Suit No. 345 of 1950 at an early date as the same is to be filed along with the appeal. The matter may be treated as very urgent.

L.D. DEC 1953

THE SECRETARY TO GOVT. OF
LEGAL DEPARTMENT.
File No. 29391
No. 9479 Dt. 3/12/53 E

Yours faithfully,

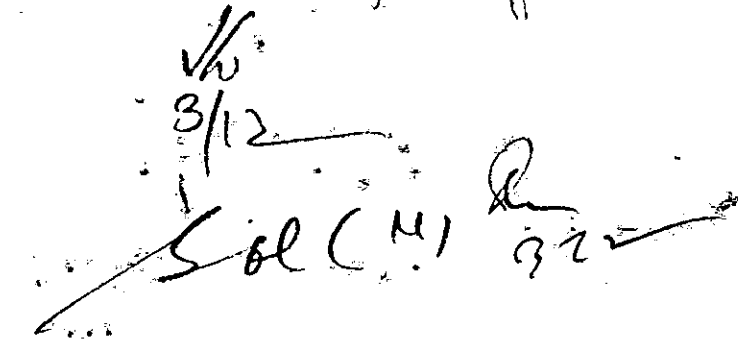
V.S Desai

for Government Pleader, High Court

Bombay, 2-12-1953.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information and necessary action if any with reference to his letter No.23732/E dated 25th November 1953.

Sechnitte für uformales



11/57

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No. 666

Office of the Government Pleader, High Court.

Bombay, 23 January 1954.

From

Shri H. M. Choksi, B. A. (Hons.) LL. B.,

Government Pleader, High Court, BOMBAY.

To

The **Collector** of Dharwar, At : DHARWAR.

Subject : Second Appeal No.81/54 in C.A.No.230/52 in C.S.No.345/50. The State of Bombay -VS- Shri Mallappa Veerabhadrappa Deshpande. ... ...

SIR,

R.L.A.'s letter No.23732/E

With reference to [redacted] No. X dated the 25th Nov. 1953, on the above subject, I have the honour to invite reference to Rule 134 (2) of the Law Officers' Rules and to request you to direct the District Government Pleader who may have conducted the case, referred to above in the Court below, to inform me the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing in the High Court as those exhibits which are in vernacular will have to be translated for the use of the Court and those that are in English will have to be incorporated in the paper books which will be prepared for the use of their Lordships. The appeal has been admitted on 21st January 1954.

2. Certified copy of the notice given by the plaintiff to the Secretary of State under Section 80 C. P. Code should be sent to me at an early date.

3. I shall also thank you to send to me four copies of the plan showing the exact position of the land acquired in relation to its surrounding situation and the several instances of sale relied on in the Lower Court.

L.D. 25 JAN 1954

THE GOVERNMENT LEGISLATIVE DEPARTMENT.
File No. 2343
Sub No. 27/1/54 E

Yours faithfully,

for *Government Pleader, High Court.*

Bombay 23 January 1954.

No. 667

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information.

L.D

Submitted for information

Shw
27/1

Sol (M) 2211

RI No. 16729 of 1956

The R.D may be informed that appeal is still pending in this Court

Shw 2216 Sol (H.J) Sd. Sh. K 2216.

N.R to R.D No 15219/E of 22nd June 1957

June 1957

Suits:

Dharwar.

For recovery of Rs.3837-4-7 as the refund of the amount of Dattak Nazarana.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15852/E
Bombay Castle, 30th June 1954.

Read Government Resolution, Legal Department No.20951/E, dated the 12th December 1952.

Letter from the District Government Pleader, Dharwar, No.749, dated the 16th September 1953 stating that the Civil

Inthe Court of the Civil Judge (Senior Division), Dharwar.	: Appeal No. : 230/52
Civil Suit No.345 of 1950.	: filed in the
Mallappa Veerbhadrappa Deshpande... Plaintiff; Vs. The State of Bombay . ... Defendant.	: suit noted : in the margin : was decided

by the Assistant Judge, Dharwar, on the 27th August 1953 when the following order was passed:-

> "In the result the decree of the lower court is set aside and the plaintiff is given ~~th~~ a decree for Rs.3837-4-7 with interest at 4 per cent from the date of the suit till recovery along with costs throughout".

Letter from the District Government Pleader, Dharwar, No.767 dated the 22nd September 1953 recommending the institution of second appeal.

RESOLUTION:- Sanction is accorded to the institution of Second Appeal in the High Court of Judicature at Bombay against the decision of the Assistant Judge, Dharwar, dated the 27th August 1953, on the lines of the brief accompanying Government Resolution, Legal Department, No.15378, dated the 26th September 1951.

By order and in the name of the Governor of Bombay,

R. Katarki

(R. T. KATARKI),
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay,
The District Government Pleader, Dharwar.

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Fide ... S. Dharwar 11/51

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